

DETAILED ACTION

Information Disclosure Statement

1. The IDS submitted on January 3rd, 2007, July 30th, 2007, January 10th, 2008, and April 15th, 2008 have been considered in full. The IDS submitted on July 30th, 2004 has been considered in part. It appears that several of the references submitted in the corresponding parent case have been misplaced. Applicant is requested to resubmit the references that could not be considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 59, 80, 94, 101 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 59 recites the limitation "steps (b)-(e)" in line 5. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 80 recites the limitation "steps (b)-(e)" in line 7. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 94 recites the limitation "seizure point" in line 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 101 recites the limitation "steps (b)-(e)" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1 and 46-65 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

10. Claims 1 and 46-65 recite a process but fail to meet the requirements for a statutory process claim. For a process to a statutory subject matter it must be tied to another statutory class such as a particular apparatus or transform underlying subject matter to a different state or thing. Since neither of these requirements are being met, the method is not a patent eligible process as being directed to non-statutory subject matter. See MPEP 2106.IV.C.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1, 48, 52-54, 66, 69, 73-75, 87, 90, 95, and 96 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 16-19, 31, 33, and 34 of U.S. Patent No. 6,735,467. Although the conflicting claims are not identical, they are not patentably distinct from each other because the "medical state" recited in the preamble is only readily applicable to seizures and otherwise the limitations are substantially identical.

Allowable Subject Matter

13. Claims 1, 46-107 would be allowable if it overcame all of the various rejections applied above. Osorio et al. (USP #6,549,804), Le Van Quyen et al. (USP #6,442,421), and Olsen et al. (USP #5,311,876) teaches various methods for seizure detection. However, although various aspects of the invention are taught within these references, including the dividing of a digitized waveform of a EEG recording into epochs or use of neural networks, none disclose the computing of matching pursuit for a given one of the epochs to obtain a plurality of atoms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN Y. JANG whose telephone number is (571)270-3820. The examiner can normally be reached on Mon. - Fri. (8AM-5PM) EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CJ
/C. Y. J./
Examiner, Art Unit 3735
10/23/08

/Charles A. Marmor, II/
Supervisory Patent Examiner
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